



3782

P/231-140

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

LEISI, MARCEL

Serial No.: 10/030,572

Filed: January 3, 2002

For: SPRAY HEAD

Date: February 6, 2004

Group Art Unit: 3752

Examiner: Nguyen, Dinh Q.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
FEB 19 2004
TECHNOLOGY CENTER R3700

#8/Election
2/20/04
R Brewer

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

Applicant responds to the Restriction Requirement dated January 7, 2004 in the above captioned matter.

Relative to paragraphs 1 and 3 of the Office Action, Applicant elects with traverse generic claim 25 and species I, which Examiner describes to include Figures 1-7, and corresponding claims 26 - 47 and 50 for prosecution. Applicant elects for the purpose of complying with 37 CFR 1.143 despite disagreement with Examiner's assertion that Figs. 8-11 represent a different species than is represented in Figs. 1-7. Under the applicable rule, restriction of claims in a U.S. National filing of a PCT application is judged on the "unity of invention" test, and the restriction requirement here is not based on that test.

Applicant respectfully traverses the species restriction requirement here because it is premised on the inapplicable "independent and distinct" test under U.S. restriction practice, rather than the applicable "unity of invention" standard.

Under U.S. practice, M.P.E.P. 802.01, all restrictions, including those based on different species, are determined under the "independent and distinct" test. I.E. two or more "independent and distinct" inventions may not be claimed in one application. Regarding species claims, where there "is no disclosed relationship between the two . . . species," they are independent inventions and election of one invention following a requirement for restriction is mandatory. M.P.E.P.

802.01. If a generic claim is not allowed, then the claims directed to the different species are distinct, as well as independent and, as such, the restriction requirement will not be withdrawn. However, the foregoing is inapplicable here, because this application is a national stage application, for when unity of invention (not restriction) practice is applicable. Under the Unity of Invention test, “no problem arises in the case of a genus/species situation where the genus claim avoids the prior art.” M.P.E.P. 1893.03(d);1850(a). Therefore, requiring an election of species is an erroneous application of the “unity of invention” test.

Rather, the “unity of invention” test focuses on whether the claims of the application, regardless of the number of species, “are so liked as to form a single general inventive concept.” M.P.E.P. 1893.03(d). A single general inventive concept exists where there is a technical relationship among the inventions involving “at least one common or corresponding special technical feature” that defines “the contribution which each claimed invention, considered as a whole, makes over the prior art.” M.P.E.P. 1893.03(d).

Consistent with the above unity of invention standard, claims 25 - 51 relate to a “single general inventive concept” under PCT Rule 13.1 and 13.2. In the present application, the contribution over the prior art is, foremost, the ability to prevent the accumulation of “sediment deposits” on the head by utilizing a “rotary element” that has “a circular central part” and “a nozzle”, where the “rotary element” is received by “a lateral aperture of the central body” in such a way that one is capable of raising the nozzle to emerge from the top of the head. Spec., p. 1, l. 35 to p. 2, l. 6; p. 2, ll. 14-35. Consistent therewith, Claim 25 comprises a “rotary element having a circular shaped central part and the central part is introduced into the space in the central body, a nozzle . . . [and] the lateral aperture being shaped such that . . . upward translational movement of the central part brings the central part into a working position . . . and that the nozzle on the working position is above the top side of the central body.” Claim 25 is the only independent claim, and claims 26-51 ultimately depend therefrom. Therefore, consistent with “unity of invention” test, all of claims 25-51 contain a “common or corresponding technical feature” that “define the contribution which each claimed invention, considered as a whole, makes over the prior art.” M.P.E.P. 1893.03(d).

For the foregoing reasons, the Examiner is respectfully requested to reconsider his requirement of election of species I and II, and to group claims 25-51 together for purposes of examination.

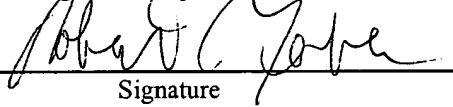
In view of the foregoing, favorable reconsideration and examination of claims 25-51 on the merits are respectfully solicited.

Therefore, applicant requests the restriction requirement be rescinded.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450, on February 6, 2004

Robert C. Faber

Name of applicant, assignee or
Registered Representative

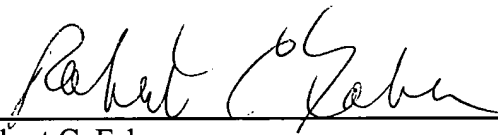


Signature

February 6, 2004

Date of Signature

Respectfully submitted,



Robert C. Faber

Registration No.: 24,322

OSTROLENK, FABER, GERB & SOFFEN, LLP

1180 Avenue of the Americas

New York, New York 10036-8403

Telephone: (212) 382-0700